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ABSTRACT

This brief provides an overview of three recent state court cases in Alabama, Wyoming, and Ohio that uniquely address the constitutionality of state special education finance systems. In each case, the courts found the special education finance systems to be unconstitutional due to inequitable or inadequate funding for children with disabilities. Taken as a whole, these court decisions suggest that state special education finance systems are vulnerable to future court challenges because they curtail the availability of a free and appropriate education for children with disabilities and restrict equal educational opportunities. The brief also discusses the implications these cases have for the future of special education funding systems and suggests several broad parameters that funding systems should consider to meet the full intent of the law. These include: (1) special education finance must be cost-based (costs must be legitimate and justifiable); (2) the real costs of providing special education and related services must be incorporated in the state finance system and supported by the state, either through full state funding or state-local cost sharing; (3) the provision of special education and related services must be uniform across the state; and (4) facilities must be safe, healthy, and accessible to all children. (Author/DB)

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CSEF brief

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Landmark Court Decisions Challenge State Special Education Funding

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Abstract

This brief provides an overview of three recent state court cases in Alabama, Wyoming, and Ohio that uniquely address the constitutionality of state special education finance systems. In each case, the courts found the special education finance systems to be unconstitutional due to inequitable or inadequate funding for children with disabilities. Taken as a whole, these court decisions suggest that state special education finance systems are vulnerable to future court challenges because they curtail the availability of a free and appropriate education for children with disabilities and restrict equal educational opportunities. The brief also discusses the implications these cases have for the future of special education funding systems and suggests several broad parameters that funding systems should consider in order to meet the full intent of the law.

The courts have long been involved in the area of special education. As early as 1971 in the *PARC v. Commonwealth* decision in Pennsylvania, the practice of excluding mentally challenged children from public schools was struck down as unconstitutional.[1] This ruling was later extended to all children with disabilities in *Mills v. Board of Education of District of Columbia* (1972).[2] The primary focus of the case was the district court's decision that lack of funds was no excuse for the absence of programs and services for children with disabilities. These two cases opened the door to the provision of a free and appropriate education for children with disabilities, a right that would subsequently be enshrined in law and in federal statute under the Individuals With Disabilities Education Act (IDEA) in 1975.[3]

Recently, the courts have addressed a new aspect of special education related to the constitutionality of the state special education finance system. Since 1989, high courts in 21 states have issued rulings on the constitutionality of their school finance systems. These court cases have added issues of adequacy to the usual challenges based on inequalities between wealthy and poor districts within a state. In addition, many state high courts have recently reviewed the state finance system with attention to special needs, such as the needs of urban and rural school districts and children receiving special education and related services. Of the 11 high court decisions rendered since 1989 in which finance systems have been invalidated, three have included a challenge not just to the general education finance system, but also to the special education finance system. In each of these cases, the special education funding system has been found to be unconstitutional.

Because the provision and governance of education is a *state* responsibility under the U.S. Constitution, state high court decisions apply only to the state where the decision has been rendered. However, these three judicial opinions provide a broad set of important considerations for other states as they face court challenges or seek to avoid them altogether. They also are useful to the majority of states seeking to modify their special education finance systems in an effort to make them more equitable and adequate, while providing incentives for localities to meet the full intent of the IDEA: the provision of a free and appropriate education for children with disabilities in the least restrictive setting.

A brief review of these three cases, their significance, and implications for the future of special education finance systems follows.

EC 306 256

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Alabama: Inequity and Inadequacy.[4]

In a sweeping lower court decision[5] with the remedy stayed by the state Supreme Court[6], an Alabama court defined an appropriate education and considered whether it was available to all children with disabilities across the state, regardless of whether they were being educated in poor or wealthy areas. The court held that children with disabilities suffered the same discrimination based on local wealth as did children in the general education system. Lack of funding circumscribed the ability of some districts to attract qualified teachers or to offer programs for children with disabilities. Funds were not available to train teachers in these areas, nor to provide transition services or offer individualized instruction. Importantly, lack of funding curtailed the availability of an appropriate education for children and youth with disabilities.

The Alabama Court also reviewed the mechanism for distributing state aid for special education—a census formula based on the total number of students enrolled in a school district. The Court found this census formula violated the equal protection clause of the state constitution, because as numbers of special education students identified in a school district increased, funding per child decreased.

It is important, however, to note that the court did not uniformly endorse the major finance alternative to census-based formulas for children and youth with disabilities—e.g., systems based on special education pupil counts, or weights. Although pupil-weighted formulas were considered more equitable, the court took the opportunity to say that such systems could work against the full intent of the law by providing fiscal incentives for more restrictive placements for children receiving special education and related services.

The Alabama decision raises several issues for states grappling with how best to finance a free and appropriate education for all children with disabilities: *What is the future of total enrollment-based funding formulas? Will other state high courts find them similarly unacceptable? If so, what alternatives exist to these methods of funding?*

As stated, the court reviewed both census-based funding and a major alternative method of funding special education—pupil-weighted funding—but was unable to fully endorse either method as equitable, adequate, and providing incentives for the provision of a free and appropriate education in the least restrictive setting. This indicates that new models of state support for financing programs and services for children with special needs may be necessary, although the vision of what they are and how they may provide incentives for meeting the full intent of the law has not yet crystallized.

Thus, the Alabama decision may portend the need for a new special education finance—one that meets the needs of children and youth in schools and classrooms, while providing incentives for educating children and youth with disabilities in the least restrictive setting and meeting their individual needs in the most appropriate fashion.

Wyoming: Inequity, Inadequacy, and Encroachment[7]

Unlike the Alabama decision, issues emerging from the recent Wyoming court case that impact special education financing developed along a different line of reasoning. In 1995, the Wyoming court reviewed and struck down the state general education finance system in part because it neither included research-based cost differentials that recognized the real costs of providing schooling in small and urban districts, nor recognized the justifiable costs of financing schooling for children in special education or other categorical programs. The court ruled that this omission and the lack of sufficient support for special education resulted in the encroachment of special education costs on general program funds, and caused both the general and special education finance system to be found inadequate, inequitable, and unconstitutional under provisions of the Wyoming state constitution.

The Wyoming ruling is important for several reasons.

- First, it adds further confirmation that states are responsible for determining and supporting the excess costs of education for districts and students with special needs, including children with disabilities.
- Second, it recognizes that financing special education and general education are inextricably intertwined. This is so because when special education is inadequately financed, it encroaches on revenues for general education to cover its mandatory expenses.
- Finally, the decision points out the need for research on the costs of special education and other needs-based factors that are legitimate and require additional funds. It holds that these costs must be linked to state funding provisions and supported by the state.

The Wyoming decision also raises several questions. *Must the state bear the full share of special education costs?* A necessary corollary to this question is: *Can the costs of special education be shared by the state with local school districts?* The court decision suggests that both state and local funds may be used to pay for the high costs associated with special education programs and services. However, such cost-sharing must be provided through an equitable funding system that is conditioned on local wealth. Other options to state-local financing, such as full state funding, may also be acceptable. If state-local cost sharing based on an equitable finance plan is the preferred alternative, chief issues include how these shares might best be determined and the levels of service that should be funded. Altogether, these specific policy questions have not been addressed by the courts. However, the Wyoming court called for cost studies to guide legislative decision making and said that the Legislature must devise the best system, cost it out, and fund it. According to the court, all other financial considerations must yield until education is funded.

Ohio: Inequity, Inadequacy, and Inaccessibility[8]

Turning to the final case, issues related to special education finance in Ohio focused on equity and adequacy, but facilities concerns were also prominently featured. Like the Alabama and Wyoming opinions, the inequitable and inadequate finance system was struck down as unconstitutional. The court also addressed several specific funding provisions, including special education, and found them unconstitutional as well.

The Ohio finance system provided additional funding for special education programs and services, but failed to fully fund mandated state services. Moreover, state aid was disbursed to school districts without regard to their ability to pay for education. When funds were insufficient, wealthy districts could easily make up the difference, but poor districts could not due to low property tax bases. This resulted in differences in funds available for special education across the state and an inequitable special education finance system based on whether or not a child was born in a wealthy or poor school district.

"...new models of state support for financing programs and services for children with special needs may be necessary..."

The Ohio court decision indicates that when funding is provided from state and local sources, state funding must be based on local wealth and it must be adequate, thereby providing sufficient funds to meet state mandates and requirements.

The court also devoted a substantial amount of attention to the poor state of school facilities in Ohio. Testimony revealed that 80 percent of the buildings were not accessible to children with disabilities; and that many school buildings were not only deteriorating and dirty, but unhealthy and unsafe—not only for children with disabilities but for all children. This indicates that school buildings still restrict the realization of a free and appropriate education for children with disabilities. Thus, school facilities must be taken into account in state finance systems. Most state funding systems provide neither direct aid for capital outlay, or the funds needed to modify school buildings to enhace access for children with disabilities.

Implications

The paramount issues in all three of these cases for children with disabilities center on the equity and adequacy of the state school finance system. The three state courts held that disparities in funding for children with disabilities that were linked to the wealth of the school district were unconstitutional. Inequitable funding led to differences in the quality and equality of programs and services for children in similar circumstances.

Inadequate funding for special education restricted the availability of a free and appropriate education for children and youth with disabilities. Inadequate funding led to the encroachment of special education financing on general education support and reduced funding available for *all* children. Inadequate and inequitable support for special education across the state resulted in a financing system conditioned on local—not state—wealth as required under the law, and abridged equal opportunities for children with disabilities across the state.

Taken as a whole, these recent state court decisions suggest that inequitable and inadequate special education finance systems across the states are vulnerable to future court challenges because they curtail the availability of a free and appropriate education for children with disabilities and restrict equal educational opportunities. Moreover, these decisions suggest that developing new systems of financing facilities as well as programs and services for children with disabilities aimed at meeting the full intent of the law should be a top priority on state policy agendas.

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Looking Ahead

These rulings suggest broad parameters of a new special education finance system.

- The new special education finance must be cost-based. That is, the costs of providing an appropriate education must be determined through research studies; they must be legitimate and justifiable.
- The real costs of providing special education and related services must be incorporated in the state finance system and supported by the state, either through full state funding or state-local cost sharing. If the funding of special education and related services is shared with localities, then state aid must be equitable—that is, conditioned on local ability-to-pay for education.
- The provision of special education and related services must be uniform across the state, regardless of whether a child is born in a more or less affluent area.
- Facilities must be safe, healthy, and accessible to all children, including children with disabilities. In addition, facility costs are a state, not a local, responsibility.

At the heart of the intersection between general education and special education finance litigation are two important possibilities for the future. First, the focus of general case law related to school finance litigation can be applied successfully to special education finance systems. Where this has occurred, in each case financing for special education has been found to be inadequate, inequitable, or both; and state high courts have held that special education finance systems were unconstitutional under their respective state constitutions. Second is the possibility of applying the long and enduring set of special education case law to general education systems, including the meaning of the right to a free and appropriate education for children with disabilities. Importantly, courts in Alabama and Wyoming, as well as 13 other states,[9] have held that education was a right for all children—not just children with disabilities. Might special education case law provide important legal reasoning to courts as they seek to interpret this right to an education for all children?

Ultimately, the new wave of school finance litigation may finally provide the means to achieve the fair and adequate funding of educational programs and services for all children with disabilities in America's public schools—an elusive goal, but one that was enshrined into law in the 1970s through judicial decisions and passage of the landmark IDEA in 1975. Moreover, the success of the plaintiffs in the recent court cases indicates the continued viability of a legal strategy for realizing the rights of children, including children with disabilities, to equal and adequate educational opportunities in America's schools across the country.

Endnotes

1. *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, 334 f. Supp. 1257 (E.D. Pa. 1971).
2. *Mills v. Board of Education of District of Columbia*, 348 F. Supp. 866 (D.C. DC 1972).
3. P.L. 91-230, as amended.
4. *Opinion of the Justices*, 624 So.2d 107 (Ala. 1993). *Coalition for Equity et al. v. Hunt*, CIV. A. Nos. CV-90-883-R, Harper v. Hunt CV-91-0117.
5. *Opinion* at 165.
6. Id. at 107 (*Alabama Coalition for Equity Inc. v. Hunt; Harper v. Hunt* (1993))
7. *Campbell Co. School Dist. v. State*, 907 P.2d 1238 (1995).
8. *DeRolph v. State*, 677 N.E. 733 (1997).
9. Hickrod, A. (August 1994) quoted by Alexander, K. & Salmon, R. G. (1995). *Public School Finance*. Allyn and Bacon, pp. 42-43.

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